

1
2
3
4
5 UNITED STATES BANKRUPTCY COURT
6 NORTHERN DISTRICT OF CALIFORNIA

7 In re

8 BODEGA BAY SUNSET PROPERTY, LLC,

No. 01-11600

9 Debtor(s).
10 _____/

11 BODEGA BAY SUNSET PROPERTY, LLC,

12 Plaintiff(s),

13 v.

A.P. No. 02-1261

14 PETER K. BOEK,

15 Defendant(s).
16 _____/

17 Memorandum re Postpetition Attorneys' Fees
18 _____

19 The deed of trust held by secured creditor and defendant Peter Boek provides that the debtor
20 shall pay reasonable attorney's fees incurred by Boek in any action or proceeding in which he might
21 appear. Bankruptcy proceedings are such proceedings; section 506(b) of the Bankruptcy Code permits
22 such secured creditors to recover their attorneys' fees to the extent they are reasonable. *In re Le*
23 *Marquis Associates*, 81 B.R. 576, 578-9 (9th Cir.BAP 1987).

24 In this case, Boek has demanded reimbursement for \$27,600.00 in postpetition fees and related
25 expenses. Of these, \$18,018.00 are for normal activities of a secured creditor in filing a proof of claim,
26 monitoring the proceedings, filing a motion for relief from the automatic stay, and objecting to the

1 debtor's plan. These activities were reasonably necessary to protect Boek's interests, and the amounts
2 billed are reasonable. Accordingly, these fees and expenses will be approved.

3 However, Boek seeks an additional \$9,582.00 for attorney's fees and expenses he incurred in
4 drafting and filing a creditors' plan of reorganization. Boek has not convinced the court that this activity
5 was reasonably necessary to protect his interests or made a significant contribution to the case.

6 Under some circumstances, it might be possible for a secured creditor to obtain reimbursement
7 for proposing a plan. Even, perhaps, if the plan was not ultimately confirmed. However, at a minimum
8 the plan must be necessary, lawful and have some reasonable prospects for support from other creditors
9 and confirmation. Boek's plan was lacking in these basic requirements.

10 Boek's plan was not necessary. Both the debtor and an active Creditor's Committee filed their
11 own plans within days of Boek's. Boek was serving no interests other than his own by proposing and
12 prosecuting a third plan.

13 Boek's plan was probably not lawful. It provide for him to become a 25% owner of the debtor's
14 assets and be in sole control *while retaining his lien*. These provisions were far more than necessary to
15 "cram down" a plan over his objection pursuant to § 1129(b)(2)(A) of the Bankruptcy Code. As such, it
16 had no reasonable prospects for confirmation.

17 Most tellingly, Boek had absolutely no support from the Creditor's Committee or any other
18 creditor for his plan. Since confirmation without the affirmative vote of the unsecured creditors was
19 extremely unlikely, any reasonable attempt to confirm a plan in good faith required the plan proponent to
20 meet with the Creditors' Committee and reach at least an informal understanding before commencing the
21 expensive confirmation process. It does not appear that Boek ever consulted any other creditor before
22 filing his self-serving plan.

23 The court is unimpressed by Boek's arguments that his plan spurred others to get the case moving
24 or that he should be given credit for the Committee's use of his plan as a starting point for its own. The
25 case was not languishing before Boek filed its plan; the debtor filed its own plan just a few days later.
26 The use of some of his wording in the Committee's plan hardly qualifies as a substantial contribution to

1 the case. From the court's viewpoint, Boek's plan was an interruption to the case, not a contribution to
2 it. Boek's plan was almost unanimously rejected by the creditors, garnering a single vote other than
3 Boek's own vote. There is simply no causal connection between Boek's abortive plan and the outcome
4 of the case. See *Matter of DP Partners Ltd. Partnership*, 106 F.3d 667,673 (5th Cir. 1997).

5 For the foregoing reasons, Boek will be allowed only \$18,018.00 on account of expenses and
6 attorney's fees incurred postpetition.

7 Once the final issue regarding prepetition fees has been resolved, the parties shall jointly submit
8 a form of summary judgment. Each side shall bear its own fees and costs.

9
10
11
12
13 Dated: May 1, 2003
14 _____



15
16
17
18
19
20
21
22
23
24
25
26

Alan Jaroslovsky
U.S. Bankruptcy Judge